IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1743 OF 2005

Bank of Maharashtra & Ors. ...Petitioners

Versus

Shri Narayan Lahu Gawade & Anr. ...Respondents

.....

Mr.G.S.Kulkarni with Mr.Rajan Salvi for Petitioners.

Mr.M.D.Nagle for Respondent No.1.

Mr.Y.S.Shinde, A.P.P. for Respondent No.2.

.....

CORAM: A.M.KHANWILKAR, J.

DECEMBER 5, 2005.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Nagle waives notice for Respondent No.1. Mr.Shinde, A.P.P. waives notice for Respondent No.2.

3. As short question is involved, Petition is

taken up for final disposal forthwith, by consent.

4. This Petition challenges the order passed by the 9th Labour Court at Mumbai directing issuance of summons against the Petitioners in Miscellaneous Criminal Complaint (ULP) No.72/2005 to show cause why appropriate action should not be taken for having committed breach of order dated 27th June 2005.

5. Briefly stated, in proceedings pending before the Labour Court at the instance to Respondent No.1 against the company, injunction order was passed on 27th June 2005 to forbear from dealing with the properties of the Company. According to the Respondent No.1 inspite of such order being brought to the notice of the recovery officer of the Petitioner Bank, the recovery officer proceeded to deal with the property in respect of which public auction was notified and bids were received and entertained on 26th June 2005. For this breach committed by the recovery officer of the Petitioners, the Respondent No.1 moved the Labour Court for appropriate orders

against the Petitioner Bank and its Officers. This is the subject matter of challenge in the present Petition.

6. Counsel for the Respondent No.1 took preliminary objection regarding the maintainability of the present Petition. Relying on the decision of our High Court in **Clifford Rebello vs. Hotel Oberoi Towers reported in 2001 III CLR 805**, it was contended that against the order dated 1st July 2005, issuing summons to the Petitioners to show cause why they should not be proceeded with for having committed breach of the previous order of the Labour Court, remedy of appeal and/or Revision under Section 42 and Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act 1997, was available to the Petitioners and without exhausting that remedy, the Petitioners have approached this Court by way of present Petition. The argument seems to be attractive.

7. However, I find substance in the

submission canvassed on behalf of the Petitioners that remedy of appeal under Section 42 will be available only against final order of conviction or acquittal or for enhancement of the sentence by the Government. No such order has been passed as at present. For the time being, the lower Court vide order dated 1st July 2005 has merely issued summons to the Petitioners, which order cannot be challenged in appeal under Section 42 nor such order can be challenged by way of Revision under Section 44, as the same cannot be said to be alternative efficacious remedy. Section 44 has been held to be only an enabling provision and not an alternative efficacious remedy for the parties in the decision reported in **1991 II CLR 547 in the case of Satish J.Mehta & Ors. vs. State of Maharashtra and Anr.** I am inclined to accept the submission canvased on behalf of the Petitioners that present remedy is the appropriate remedy in the fact situation of the present case relying on the exposition in the abovesaid case. Accordingly, preliminary objection deserves to be negated.

8. Insofar as merits are concerned, I have no

hesitation in taking the view that the order passed by the Labour Court on 1st July 2005 directing issuance of summons to the Petitioners to show cause why action should not be proceeded with for having committed breach of order dated 27th June 2005 is concerned, is untenable for more than one reason. The background in which that order has been passed on 1st July 2005, is the order passed by the recovery officer on 27th June 2005. On perusal of the said order, in my opinion, the recovery officer has not at all ignored the order passed by the Labour Court. In fact, he has respected the same in its letter and spirit. The Recovery Officer of the Petitioners has observed as follows:

> "It was also made clear that Sale will be concluded only after seeing the order of the Hon'ble Industrial Court....."
>
> "The Ld. Adv. for Defendants were also directed to inform the Ld.Adv. of Workers that they should move appropriate application in the Tribunal for necessary orders."

9. To my mind, the recovery officer has shown due regard to the order passed by the Labour Court

dated 27th June 2005 and has not committed any breach thereof by adopting such approach.

10. Viewed in this perspective, there was no occasion to issue summons to the Petitioners for showing cause as to why appropriate action should not be taken for having committed breach of order.

11. There is additional reason to interfere in the present Writ Petition as it is brought to my notice that the original application (Exhibit U-2) in which injunction order dated 27th June 2005 came to be passed by the Labour Court has now been rejected by the Industrial Court vide Judgment and Order dated 16th August 2005. In that sense, even the injunction order which operated in favour of the Respondent No.1 has been effaced by the rejection of the said application.

12. In any case, for the view that I have already taken that the recovery officer has not committed any breach of the order passed by the Labour Court dated 27th June 2005, the order issuing summons to the Petitioners as passed on 1st

July 2005 cannot be sustained. The same is therefore set aside and as a consequence of which, the summons issued to the Petitioners on 1st July 2005 Exhibit ‘G’ is also quashed and set-aside.

A.M.KHANWILKAR, J.